SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 143

LAKE LUCERNE PLAZA, INC.,
Petitioner,

vs.

CHESTER BOWLES, AS ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLAUDE L. GRAY,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Justices of the Supreme Court of the United States:

Lake Lucerne Plaza, Inc., petitioner, respectfully petitions the Court for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause therein lately pending between Chester Bowles, as Administrator, Office of Price Administration, appellant, and said petitioner, appellee, wherein a judgment was rendered by said Circuit Court of Appeals on April 14th, 1945, reversing the judgment of the District

Court, and in support of its said petition, petitioner (defendant in the District Court) respectfully shows:

A

Summary Statement of the Matter Involved

Chester Bowles, as Administrator, Office of Price Administration filed suit in the District Court in and for the Southern District of Florida, Orlando Division, seeking to restrain Lake Lucerne Plaza, Inc. (the petitioner), from the collection of rents which had been fixed by the Office of Price Administration as its maximum ceilings alleging that these ceilings were effective from the date of the entry of the order which established them, although the particular order establishing these rentals was by way of a correction of an erroneous order entered by the local director several months prior. The rents in question were those existing between the date of the erroneous order and the date of the corrected order.

The Federal Act relied on was the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Supp. III, Section 901).

The District Court entered judgment on June 29th, 1944 dismissing the bill and denying the injunctive relief prayed for.

Jurisdiction of the District Court was invoked under Section 205(c) of the Emergency Price Control Act (50 U. S. Code App. Supp. III, Sec. 925(c)).

An appeal was taken to the Circuit Court of Appeals in and for the Fifth Circuit, jurisdiction being invoked under Section 128 of the Judicial Code (28 U. S. Code 225).

On April 14, 1945 the Circuit Court of Appeals rendered its opinion (R. 116-121) reversing the District Court. Cir-

cuit Judge Waller specially concurring as follows: (R. 121-122)

> "I concur in the opinion that the jurisdiction to determine whether or not the landowner should be entitled to collect the proper rent retroactively is vested in the Emergency Court of Appeals, but it appears without dispute that the rental fixed by the local Rent Director was erroneous, made without a visit to the premises, and, therefore arbitrary. The subsequent fixing of an equitable rent by the Deputy Administrator confirms this. Appellant seeks the aid of this Court to perpetuate that error and to preserve that arbitrariness.
>
> I think the Court in this opinion should say that the offices of a court of equity should not be so utilized."

Petition for rehearing was filed May 3rd, 1945 (R. 123-128) which was denied by order entered May 17th, 1945 (R. 129). Circuit Judge Waller voting to grant a rehearing on the stated grounds:

> "I am unable to bring myself to believe that a court of equity should lend its processes to the perpetuation of an admitted wrong. It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving."

The Office of Price Administration by and through its National Office rendered an opinion (R21-22) on a protest filed by Lake Lucerne Plaza, Inc., which recites as follows:

> "The protestant's housing accommodations, which consist of nine buildings containing sixteen rental units, thirteen of which are involved in this proceeding, were first rented subsequent to October 1, 1941, the maximum

rent date for the Orlando Defense-Rental Area. The following first rents per month were charged for the accommodations involved in this proceeding:

Apt. 2A	$150.00	Apt. 7B	$227.60
Apt. 2B	250.00	Apt. 8A	85.00
Apt. 3B	110.00	Apt. 8B	85.00
Apt. 5A	85.00	Apt. 9A	125.00
Apt. 5B	110.00	Apt. 9B	128.50
House 6	150.00	Apt. 9C	75.00
Apt. 7A	175.00		

Under the Regulation these rents became the maximum rents until changed by the Administrator.

After due notice and hearing, pursuant to Section 5 (c) of Maximum Rent Regulation No. 24, the Area Rent Director entered an order decreasing the rents for protestant's housing accommodations on the ground that the first rents charged were substantially higher than the rents generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date. The rents for House 1, and Apartment 3A were not decreased by the Area Rent Director; therefore, the rents for these accommodations are not involved in this proceeding.

In its protest and additional evidence, the protestant contended that the orders decreasing its rents are erroneous because the evidence does not support the finding that the schedule of rents generally prevailing in the Area for comparable furnished accommodations on the maximum rent date.

After due consideration of all of the evidence contained in the record, the Administrator is of the opinion that, on the basis of the rents generally prevailing in the Orlando Defense-Rental Area for comparable housing accommodations on the maximum rent date, the monthly maximum rents for protestant's housing accommodations should be established at

Apt. 2A	$110.00	Apt. 7B	$100.00
Apt. 2B	110.00	Apt. 8A	85.00
Apt. 3B	100.00	Apt. 8B	80.00

Apt. 5A	85.00	Apt. 9A	115.00
Apt. 5B	100.00	Apt. 9B	70.00
House 6	75.00	Apt. 9C	65.00
Apt. 7A	90.00		

It will be observed from the foregoing that the local area rent director had, pursuant to the provisions of the regulations, issued under the emergency price control act, entered an order attempting to decrease the rents for the housing accomodations in question on the ground that the first rents charged were substantially higher than the rents *generally prevailing in the defense-rental area for comparable housing accommodations on the maximum date.* Under this regulation the area rent director was limited to reducing the maximum ceilings by a formula fixed by the regulation itself. It was error for him to have reduced them to a lower level than that fixed by the regulation. The Lake Lucerne Plaza, Inc., had exercised its rights under the act and the regulations and had obtained its objective, namely, the correction of the error.

The District Court correctly decided the case, making the following findings:

> "Pursuant to the provisions of Section 2 (b) of the Emergency Price Control Act of 1942 (50 U. S. C. A., Secs. 901-946 as amended) former Price Administrator Leon Henderson, prior to October 1, 1942, promulgated and issued Maximum Rent Regulation No. 55 applicable to and governing and controlling, in addition to other areas in the United States, the territory and area therein described and defined as 'The Orlando Defense-Rental Area' consisting of Orange County, Florida, and embracing the City of Orlando in which is located the housing accommodations operated and maintained by the defendant as described in the complaint filed herein. October 1, 1941, was fixed as the maximum rent date for determining the rental charges for housing accommoda-

tions in said area and November 1, 1942, was named as the effective rent date.

II

A Rent Area Director was duly and promptly appointed for the Orlando Defense Rental Area and the defendant, pursuant to the requirements of the Emergency Price Control Act of 1942 and the regulations issued thereunder by the Administrator, filed with the Area Rent Director rentals for the premises involved in this case. These rentals remained in effect until June 29, 1943, when the Area Rent Director for the said Orlando Defense Rental Area ordered effective as of that date a substantial reduction in these rentals. The defendant herein immediately took an appeal from said order to the Atlanta Regional Office which denied the defendant any relief, after which the appeal was further perfected to the Office of Price Administration in Washington, D. C., and upon review by that office, the order of the Area Rent Director under date of June 29, 1943, was set aside by the order of the Office of Price Administration dated February 29, 1944, and a new and higher schedule of rentals prescribed by said order.

The sole question before the Court is what were the lawful rentals in effect between June 29, 1943, the date of the Area Rent Director's order and February 29, 1944, the date of the order of the Office of Price Administration. The parties agree that the rents established by the defendant and in effect prior to June 29, 1943, were lawful rents and that the rents ordered by the Office of Price Administration are now the lawful rents in effect.

The Administrator contends that the rates prescribed by the Area Rent Director under date of June 29, 1943, on that date became and continued to be the lawful rents until modified by the Office of Price Administration under date of February 29, 1944. The defendant contends that the rents established by the order of the Office of Price Administration dated February 29, 1944, are the lawful rents for the period in question, but that

if no retroactive effects may be given to these rents, then the rents established by the defendant and in effect prior to June 29, 1943, remained the lawful rents until lawful rents were established pursuant to said act and regulations issued thereunder which was done by the order of the Office of Price Administration dated February 29, 1944. There is no controversy as to the facts in this case and the only question presented is one of law."

and the conclusions of law following:

"Conclusions of Law

I

This Court holds that as the Emergency Price Control Act of 1942 and regulations issued thereunder authorizing an appeal from an order of an Area Rent Director required, in the judicial process, first an appeal to the Regional Administrator, followed by an appeal to the Office of Price Administration before the appeal may be perfected to the United States Emergency Court of Appeals created by said Act, that each step taken for the review of an order entered by an Area Rent Director is in effect a review of the legality of the order of said Director and is controlled by the same general legal principles that apply in cases appealed from lower to higher courts. This Court, therefore holds that the order of the Office of Price Administration dated February 29, 1944, became the only lawful order changing the rentals theretofore lawfully established by the defendant and that said order reverted to June 29, 1943, the date of the entry of the illegal order of the Area Rent Director for the Orlando Defense Area, which it superseded.

II

The rents established by the Office of Price Administration entered February 29, 1944, on the several units of the housing accommodations involved in this case

became the lawful rentals from and after June 29, 1943, for the use and occupancy of said accommodations.

III

Plaintiff is not entitled to maintain this suit to enforce the order of the Area Rent Director for the Orlando Defense Rental Area entered June 29, 1943.

IV

Plaintiff's prayer for injunctive relief should be denied and the complaint dismissed.

Let an order be drawn accordingly.

This the 29th day of June, A. D. 1944." (R. 107-109.)

The majority opinion of the Circuit Court of Appeals (R. 121) observed in its opinion:

> "We are not unmindful of the fact that if the maximum rents fixed by the Administrator on February 29, 1944, were proper when fixed, then they should have been proper before; and it may well be that the action of the Administrator in establishing the rates as fixed by him on June 29, 1943, was both capricious and arbitrary. But neither this court nor the court below has jurisdiction to consider the validity, the inconsistency, or the arbitrariness of the administrative orders. * * * We can only construe and enforce them."

Circuit Judge Waller in his specially concurring opinion observed:

> "Appellant seeks the aid of this Court to perpetuate that error and to preserve that arbitrariness. I think the Court in this opinion should say that the offices of a court of equity should not be so utilized." (R. 122).

Circuit Judge Waller also commented in the order denying rehearing:

> "It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court

instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving." (R. 129).

The Circuit Court of Appeals in the majority opinion construed the provisions of 204(b) of the Emergency Price Control Act providing for judicial relief against an order or regulation as arbitrary or capricious or not in accordance with law as being limited only to relief to be sought in the Emergency Court of Appeals and the Supreme Court upon review of judgments of that Court and that no other Court has the power or jurisdiction to enjoin, set aside, or consider the validity of any such order or regulation under the provisions of Section 204(d) of the Emergency Price Control Act.

In taking this position the Circuit Court of Appeals overlooked the fact that the determination of this case depends upon a proper construction of the regulations issued under the Act under which the area rent director proceeded and whether or not the action taken by the area rent director was in accordance with the formula fixed in the regulation itself. The act of the area rent director was illegal because it violated and was in conflict with the regulation under which he undertook to reduce the rents.

The Circuit Court of Appeals in the majority opinion overlooked the fact that the administrator invoked the jurisdiction of the District Court and not the landlord to perpetuate an order which was admittedly wrong. The administrator should not now be heard to complain because having selected the forum of his choice his action was dismissed by a court of equity which could not in good conscience allow the offices of a court of conscience to be so misused and abused.

B

1. Jurisdiction is invoked under Section 240 of the Judiciary Code, as amended by the Act of February 13, 1925, 43 Statutes 938, 28 U. S. C. A. Section 347.

2. The Statute of the United States involved is the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Congress, 2nd Session, 56 Stat. 23, 50 U. S. C. A., secs. 901-946), as amended October 2, 1942 (Pub. Law 729, 77th Congress), and the maximum rent regulations issued by the Office of Price Administration relating to rent control particularly Section 5(c)1 and other pertinent provisions thereof hereinabove summarized.

3. The judgment to be reviewed is dated April 14th, 1945. Petition for rehearing denied May 17th, 1945.

C

The precise questions involved in this matter are as follows:

1. DOES A FEDERAL DISTRICT COURT HAVE THE POWER UNDER THE PROVISIONS OF THE EMERGENCY PRICE CONTROL ACT TO CONSTRUE A REGULATION ISSUED BY THE OFFICE OF PRICE ADMINISTRATION AS PREVAILING OVER AN ORDER ISSUED BY AN AREA RENT DIRECTOR, WHICH ORDER IS IN CONFLICT WITH THE TERMS OF THE REGULATION ITSELF?

2. IN A CASE BROUGHT BY THE OFFICE OF PRICE ADMINISTRATION IN A UNITED STATES DISTRICT COURT OF EQUITY TO PERPETUATE AN ADMITTED WRONG, SHOULD THE COURT OF EQUITY LEND ITS PROCESSES TO AID THE OFFICE OF PRICE ADMINISTRATION IN PREVENTING A LANDLORD FROM ATTEMPTING TO EXTRICATE HIMSELF FROM AN ILLEGAL AND UNJUST WEB OF THE OFFICE OF PRICE ADMINISTRATION'S OWN WEAVING?

3. WHERE A LANDLORD AVAILS HIMSELF OF THE PROCEDURE SET FORTH IN THE EMERGENCY PRICE CONTROL ACT AND THE REGULATIONS ISSUED THEREUNDER AND OBTAINS A REVERSAL FROM AN ADVERSE ORDER ISSUED BY AN AREA RENT DIRECTOR, SHOULD THE GENERAL LEGAL PRINCIPLES APPLICABLE IN CASES OF APPEAL FROM LOWER TO HIGHER COURTS APPLY SO THAT THE LANDLORD SHOULD BE ENTITLED TO THE BENEFITS OF HIS APPEAL?

4. WHEN A LANDLORD HAS SOUGHT HIS REMEDY BY HIS APPEAL AND PROTESTS AS PROVIDED FOR BY THE EMERGENCY PRICE CONTROL ACT AND THE REGULATIONS ISSUED THEREUNDER AND THE OFFICE OF PRICE ADMINISTRATION IN ITS OPINION ON THE APPEAL HAS ESTABLISHED THE MAXIMUM RENT CEILINGS FOR THE PROPERTY INVOLVED, SHOULD THESE CEILINGS SO ESTABLISHED REVERT TO THE DATE OF THE ENTRY OF THE ILLEGAL ORDER ENTERED BY THE LOCAL AREA RENT DIRECTOR, WHICH ILLEGAL ORDER WAS SUPERSEDED BY THE LATER ORDER OF THE OFFICE OF PRICE ADMINISTRATION, CORRECTING THE ILLEGAL ORDER?

D

The ruling and decision of the majority opinion rendered by the Circuit Court of Appeals is of such far-reaching extent as to call for a decision of this Honorable Court upon the questions of federal law here involved.

If this ruling and decision of the Circuit Court of Appeals is suffered to stand and become a precedent it will operate to the prejudice of the rights not only of the petitioner but of many other landlords engaged in the rental of property throughout the nation. Moreover, the decision of the Circuit Court of Appeals is in apparent conflict with the holding of the Supreme Court of the United States in the case of *Davis Warehouse Co.* v. *Bowles*, 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635, which case clearly sustains the view that there is vested in the Federal District Courts the

power to construe the act and regulations issued thereunder, particularly with respect to whether or not the administrator's interpretations are binding upon the courts, particularly in a case where the administrator seeks to place a construction, the effect of which is to be final as to the scope of his powers.

In this connection it is of great importance that the administrator himself know the scope of his power as well as of his inferiors in connection with their respective duties under the Act.

The decision of the Circuit Court of Appeals would render ineffective the very formula which was the basis of rent control, namely, the fixing of a freeze date and the holding of rents to that particular level. The regulation itself was prescribed by the administrator pursuant to the terms of the Act. Congress never committed to the administrator the power to make one rule or regulation for one landlord and under similar circumstances provide some other rule for another. The holding of the Circuit Court of Appeals disregards the spirit of the Act which undertook to regulate and control rents on a fair and equitable basis. The ruling of the majority of the Circuit Court of Appeals would invalidate the formula which froze the rent in the area involved as of October 1st, 1941.

The decision of the majority of the Circuit Court of Appeals is in apparent conflict with the opinion of the Supreme Court of the United States in the case of *Hecht Co.* v. *Bowles*, 321 U. S. 321, 64 S. Ct. 587, 88 L. Ed. 754, where this Court held that Congress had not intended to make such a drastic departure from the traditions of equity practise as to make it mandatory that a Federal Court, at the instance of the Office of Price Administration had no other alternative except to grant an injunction where a viola-

tion of the Act is charged. If equitable considerations are to control, then the principles enunciated in the *Hecht* case should control as the Circuit Court of Appeals for the Fifth Circuit held in the case of *Brown* v. *O'Conner*, 141 F. 2d 1019, and the further case of *Brown* v. *El Paso Iron and Metal Co.*, 141 F. 2d 938, where the Circuit Court of Appeals for the Fifth Circuit recognized that this Court had in the case of *Hecht Co.* v. *Bowles, supra*, decided that the granting or withholding of an injunction was for the district judge in the exercise of a sound and equitable discretion.

The holding of the Circuit Court of Appeals is also in conflict with the holding in *Bowles* v. *Simon* (C. C. A. 7), 145 F. 2d 334, which holds that the administrator's views on the regulations which he promulgates are not controlling upon the Courts.

For the foregoing reasons it is submitted that the decision of the Circuit Court of Appeals should be by this Court reviewed and corrected and the opinion of the District Court and Circuit Judge Waller adopted as the view of this Court.

Prayer for Writ

Wherefore, Petitioner prays for a writ of certiorari to be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit sitting in New Orleans, Louisiana, commanding that Court to certify and send to this Court upon a day to be designated, a full and complete transcript of the record and all proceedings in the case entitled *Chester Bowles, as Administrator, Office of Price Administration, Appellant*, v. *Lake Lucerne Plaza, Inc., Appellee*, being Case Number 11193, in said Circuit Court of Appeals, to the end that this cause may be reviewed and determined by this Court and

that the decree of the Circuit Court of Appeals may be reversed, and the petitioner may be granted such other and further relief as may seem proper.

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